





LIBRARY
OF THE
UNIVERSITY
OF ILLINOIS





THE
SEPARATION
OF
MOTHER AND CHILD
BY THE LAW
OF
“CUSTODY OF INFANTS,”
CONSIDERED.

By the Hon. William Weston

THE
SEPARATION
OF
MOTHER AND CHILD
BY THE LAW
OF
“CUSTODY OF INFANTS,”
CONSIDERED.

LONDON:
ROAKE AND VARTY, 31, STRAND.
1838.

THE LAW

RELATING TO

THE CUSTODY OF INFANTS.

THE law which regulates the Custody of Infant Children, being now under the consideration of the legislature, it is very desirable that the attention of the public and of Members of Parliament in particular, should be drawn towards a subject, upon which so much misconception and ignorance prevails.

It is a common error to suppose that every mother has a *right* to the custody of her child till it attain the age of seven years. By a curious anomaly in law, the mother of a *bastard child* HAS *this right*, while the mothers of legitimate children are excluded from it,—the law as regards children born in wedlock being as follows.

The custody of legitimate children, is held to be the right of the Father *from the hour of their birth* : to the utter exclusion of the Mother, whose separate claim has no legal existence, and is not recognised by the Courts. No circumstance can

modify or alter this admitted right of the father : though he should be living in open adultery, and his wife be legally separated from him on that account. He is responsible to no one for his motives, should he desire entirely to exclude his wife from all access to her children ; nor is he accountable for the disposal of the child ; that is, the law supposing the *nominal* custody to be with him, does not oblige him to make it a *bona fide* custody by a residence of the child under his roof and protection, but holds ‘the custody of the father’ to mean, in an extended sense, the custody of whatever stranger the father may think fit to appoint in lieu of the mother ; and those strangers can exert his delegated authority to exclude the mother from access to her children ; without any legal remedy being possible on her part, by appeal to the Courts or otherwise ; the construction of the law being, that they have *no power to interfere* with the exercise of the father’s right.

Should it so happen that at the time of separation, or afterwards, the children being in the mother’s possession, she should refuse to deliver them up, the father’s right extends to forcibly seizing them ; *even should they be infants at the breast*. Or he may obtain, on application, a writ of habeas corpus, ordering the mother to produce the child in Court, to be delivered over to him ; and should this order be disobeyed, he can cause

a writ of attachment to issue against her ; or, in other words, cause her to be imprisoned for contempt of court. The fact of the wife being innocent and the husband guilty, or of the separation being an unwilling one on her part, does not alter his claim : the law has no power to order that a woman shall even have occasional access to her children, though she could prove that she was driven by violence from her husband's house, and that he had deserted her for a mistress. The Father's right is absolute and paramount, and can no more be affected by the mother's claim, than if she had no existence.

The result of this tacit admission by law, of an individual right so entirely despotic, (the assertion of which *can* only be called for in seasons of family disunion and bitterness of feeling), is exactly what might have been expected. Instances have arisen from time to time in which the power has been grossly and savagely abused. It has been made the means of persecution, and the instrument of vengeance : it has been exerted to compel a disposition of property in favour of the husband, where the wife has possessed an independent fortune : it has been put into force by an adulterous husband to terrify his wife from proceeding in the Ecclesiastical Courts against him : in short, there is scarcely any degree of cruelty which has not been practised under colour of its protection.

We have given in an appendix, to which we refer our readers, a brief report of the cases quoted by Serjeant Talfourd as shewing the necessity of such a measure as that which he has lately proposed ; and we apprehend, that no right-minded man can read through the examples there given, without admitting the necessity of some such alteration in the law, as shall afford a reasonable protection to the weak and helpless of the other sex, under circumstances of great grievance and oppression.

In one of those cases, a Frenchman married to an Englishwoman, and wishing to compel a disposition of her property, entered by force the house where she had fled for refuge, dragged the child (which she was in the act of nursing) from the very breast ; and took it away, almost naked, in an open carriage, in inclement weather. The mother appealed to the Courts : the Courts decided they had *no power to interfere*. In another case the husband being in Horsemonger jail, gave the child into the care of a woman with whom he cohabited : his wife appealed to the Courts against the outrage : the Courts decided that they had *no power to interfere*. In a third instance the mother persuaded the schoolmistress who had charge of her child, to give it up to her, the child being sick of a disease of which two of her children had already died. The husband obtained a writ of habeas corpus, and the sick

child was *taken from its mother*. In the last case decided under the present construction of 'the Father's right,' the wife having discovered that her husband was living with a woman of the town whom he permitted to assume his name, and passed off as his wife, withdrew from his house to that of her mother. The husband refused to part from his mistress, but claimed his infant female children; and the claim was *admitted by the Courts*; (though baffled by the mother, who fled to France taking her children with her.)

Numerous other cases exist, in which the women have attempted to establish a claim to the custody of their children, but the result has invariably been *against the mother*, except in one or two rare instances, where property was affected; for the sake of the security of which property, and not from any admission of the mother's natural claim, the decisions were made against the father.

In cases where property was not affected, no instance has occurred, in which the bad character of the father, or the cause of separation, has operated on the decisions of the Courts of Law; and though in almost all the cases reported, both counsel and judge admit the severity and injustice of the law as affecting the mother, it does not appear that any attempt has ever been made to revise or alter it.

We are told that the difficulty is, to meet every individual instance of alleged hardship, and to enter into private complaints and family disputes, as must necessarily be the case if the Court is called upon to decide the right of access of the mother, against the inclination of the father. But it is notorious that both the Court of King's Bench and the Court of Chancery do ALREADY assume to themselves the power of meeting and deciding on individual cases. They will interfere, as aforesaid, for the security of property, and on account of religious, or even political opinions; and have established a rule that *at a specified age*, namely, 14 years, a child cannot be forced back to the custody of its father, *if the child himself be unwilling to return*.*

There was a direct interference in the case of Wellesley; in the case of Shelley; and others of less note. Nothing is now proposed which militates *more* against the father's right, than the power already vested in the Court of Chancery; nay, *nor so much*; for that Court *has* assumed to itself a RIGHT OF DECISION how far irreligion and immorality disqualify a man from *properly educating his children, or having the custody of them*; and though that right has been most sparingly exercised, yet its bare assumption and existence is surely a greater interference with parental power, than if the Court were to assume

* See Appendix, page 72.

a right to decide on the mother's claim of access to children ; *her access in no way barring the father's power to bring them up as he pleases.*

Nor is anything proposed which interferes *more directly* with the general feature of all the laws respecting women, (namely, the non-admission of their separate legal existence when married,) than is the case in *other* instances of protection of their social rights, such as the power vested in the law to guard their property ; to grant a separation *a mensâ et thoro* for cruelty or other causes ; in which the woman's separate existence is acknowledged, and the *husband's power* is made *subordinate to the law*. This is a parallel case ; it is a case of simple protection of the liberty and rights of the subject, and not of any encroachment on the authority of a father as the master of the house and the head of his family.

But, indeed, the very fact of the claims of Mrs. Greenhill and others having been ARGUED IN COURT, proves at once both the power vested in the Court to meet and weigh the circumstances of individual cases, and the assumption of a doubt as to which *parent* the custody of the children would eventually be awarded. It can neither be said that a new principle of litigation is sought to be established ; nor a new principle of interference with the common law right of the father. The only new principle sought to be established is, *that whereas hitherto the Courts have refused to*

consider the suffering and wrong done in very many instances to the mother, (on the plea that they had no option of decision on those grounds, though they had an option of decision on others ;) some recognition and acknowledgment may now be made of the mother's separate existence, and right to protection.

On what principle of *natural* justice the law is founded, which in cases of separation between husband and wife, throws the whole power of limiting the access of a woman to her children into the hands of her husband, it is difficult to say. A man should hardly be allowed to be accuser and judge in his own case, and yet such is the anomalous position created by the law. Whatever be the *cause* of separation, whether incompatibility of temper, or imputation of graver offence, the feelings on both sides must be very bitter, bitter almost to desperation, before the parties can consent to publish their quarrel to the world, and break through ties voluntarily formed, and cemented by holy vows. The husband who contemplates such a separation, is certainly angry, probably mortified, and in nine cases out of ten, *eager to avenge* his real or fancied injuries. To this angry man, to this mortified man, the law awards that which can rarely be entrusted to any human being, even in the calmest hours of life, namely, DESPOTIC POWER! Surely it requires no eloquence to move, no argument to convince, in a

case like this. There stands the one man in the world who is least likely to be *able* to judge his wife with the smallest particle of fairness or temperate feeling, and HE is the man to whom the *real* judges of the land yield their right of protection, their intelligence of decision,—their merciful consideration of individual wrong,—and their consistency in securing, under all circumstances, PUBLIC JUSTICE. To *him* it is permitted to make the power of their Courts a MOCKERY, and (in homely but expressive terms) to “*take the law into his own hands.*”

Doubtless the claim of a father is sacred and indisputable, but when the mother’s claim clashes with it, surely *something* should be accorded to her. There are other laws besides those made by men—what says the holier law, the law of nature?

Does *nature* say that the woman, who endures for nearly a year a tedious suffering, ending in an agony which perils her life, has no claim to the children she bears? Does *nature* say that the woman, who after that year of suffering is over, provides from her own bosom the nourishment which preserves the very existence of her offspring, has no claim to the children she has nursed? Does *nature* say that the woman who has watched patiently through the very many feverish and anxious nights which occur even in the healthiest infancy, has no claim to the children she has tended? And that the whole and sole claim rests

with him, who has slept while she watched ; whose knowledge of her sufferings is confined to the intelligence that he is a father ; and whose love is *at best* but a reflected shadow of that which fills her heart ? No ! the voice of nature cries out against the inhuman cruelty of such a separation.

It has been asserted that the instances are very rare in which a man will utterly deprive a mother of her children, and that it is irrational to expect the law to be altered to meet these few instances, considering the difficulties attending such an alteration. Without arguing at present why it should be *more* difficult to make the rule in the case of legitimate children, than in the case of bastards, (whose mothers receive a direct protection from the Courts, and can enforce the return of children taken from them by the father ; *vide appendix page 39*)—it may reasonably be asked, are not *all* instances of social wrong *comparatively few*, in great social bodies ? and is it not a strange and contradictory argument, to urge against the establishment of a legal recognition of the mother's claim, *that the majority of men have already agreed to act as if it were established*, by permitting residence or access as the circumstances of the individual case may seem to warrant. It will be difficult to find a single instance of a JUST, HONOURABLE, and HUMANE man, desirous of taking infant children from a mother *not guilty of sin*,

although that mother should be unfortunately separated from him on other accounts. On the contrary, examples might be given where such men have ‘leaned to mercy’s side,’ even when sternness would have appeared justifiable. The power, therefore, given by the law, rests with men who, like De Manneville and Smith, (vide appendix), use it *as an instrument of torture, to force an unwilling gift of property* ; or those who, like Mr. Ball and others, appear to *exert it from wanton cruelty, or from motives of vengeance and hatred to the woman.*

The number of instances, however, in which this irresponsible power has been exerted, must not be reckoned by the number of cases which appear from time to time in the legal reports.

Hundreds of cases are decided by judges in chambers, the particulars of which are never known to the public. Cases in which the want of means or the want of courage, have prevented the desperate and unsuccessful struggle carried on in the higher Courts by Mrs. Greenhill and others : cases in which the career of the man has been one of unquestioned tyranny ; the fate of the woman, obscure suffering, and unrecorded tears.

Most undoubtedly, there are many men whose sense of justice, affection for their children, and perhaps some lingering tenderness for the woman herself, would prompt to a merciful consideration

of her feelings ; but there are others whose hearts are harder, who sacrifice all to the indulgence of an unmanly vengeance, and who, with natures not fine enough for mercy, do (to use the expressive language of Scripture) “*scethe the kid in its mother’s milk;*” punish the child in a spirit of retaliation upon the woman, and involve the innocent and helpless in the suffering consequent upon disputes which they are not even able to understand.

It is a rash thing of any man to assert that it is *not* an injury done to his children thus to deprive them of the careful affection which should have guarded their early years. He who imagines he can find a *substitute* for maternal affection, has never felt its full value ; he who can consent, from anger and caprice, to wean his children from *their* mother, has never truly loved and respected his own. How many worthy and celebrated men have asserted that they owed all they were, to that earliest and holiest guidance ! How many men who have passed a dissipated and profligate youth, have declared that the first impressions given in childhood returned to them afterwards, and that the precepts which cheered their declining lives, were those which a MOTHER’S voice repeated to them in infancy !

It is an injury : one of which he cannot foresee the nature or extent. There is no surer receipt for destroying the disposition of any human being than to place him in a false and

unnatural position ; and what can be more false and unnatural than the position of children, who, with two parents living, are given over to hired care, or the custody of strangers, *knowing that they HAVE a mother*, whom they are neither taught to love, nor permitted to see? They may, I grant, be as well fed, as strictly watched, as diligently instructed ; but when all is done which can be done, there will still be something wanting : the halo of a mother's love will be missed from the barren years of their infancy ; they who were little loved, may be supposed to love little in return ; that anomalous infancy may recoil on the father himself ; and the children, of whom he kept *forcible* possession in his youth, may turn from him in his old age.

And here let it be once more remarked, that the custody awarded by the law is seldom, if ever, a *bona fide* custody on the part of the father. The daily tenderness, the watchful care, the thousand offices of love, which infancy requires, cannot be supplied by *any* father, however vigilant or affectionate. The occupations of his life would alone prevent his fulfilling the petty cares which surround the cradle. He is compelled to find *other* care for them, to replace that of which he has deprived them ; he is compelled either to leave them to hired female servants, or to deliver them over to some female relative. And it is in this very point that Nature speaks

for the *mother*. It pronounces the protection of the father insufficient,—it pronounces the estrangement from the mother *dangerous and unnatural*, and such as must be immediately supplied by female guidance of some sort or other. Does not this, of itself, demonstrate the harsh and unjust tenor of the law? Why should the father, whose utmost care is *insufficient* for the care of his infant children, have power to divide them from the mother, whose care is sufficient? The question evidently is not whether they shall be taken from the *mother* to be given to the *father*; the question is, whether they shall be taken from the *mother* to be given to A STRANGER; and whether the law ought not to interfere, in cases where this has been done (*as it is proved to have been done in many instances*) needlessly, wantonly, and from base and detestable motives; to protect alike the mother and child from a tyranny which injures *both*.

When the mother of a young family *elopes*, and *voluntarily* forsakes the little beings who depend on her tenderness and care, what is the loud sentence of society? Is not such a mother (*even though* THE FATHER *remain in charge of his offspring*) stigmatised as a monster? Does not the forlorn situation of the children excite compassion in every heart? Do not the words “motherless” and “deserted,” imply a foul wrong done to those infants, and an unnatural

callousness of heart in the woman who has so abandoned her trust? Most assuredly they do; and why? *Because a mother's love is believed to be the strongest tie of nature, and HER CARE TO BE ESSENTIAL TO THE WELL-BEING OF HER INFANT CHILDREN.* In the beautiful imaginary appeal to the seducer, spoken by Curran, when arguing a famous case;* he calls the abandonment of the child “*THAT MOST DEPLORABLE OF HUMAN CONDITIONS, the orphanage which springs not from the grave, which falls not from the hand of Providence or the stroke of death, but comes before its time; anticipated and inflicted by the REMORSELESS CRUELTY of parental guilt.*” Here is admitted, to the fullest extent, the evil done to the infant, and the suffering which such a parting *ought* to inflict on the mother; it ought, according to our ideas of human feeling, TO BE IMPOSSIBLE that a woman should *voluntarily* forego this claim. Why then does the *reverse* of the case make the injury done, seem so light, — the suffering endured, so little to be regarded? If the children *are* forlorn and injured by the separation, they are not *less* forlorn or *less* injured, because that separation was not a willing one; if it be *indeed* so unnatural in the mother to *leave* them, is it natural in the father to tear them from her?

But even admitting that as far as the children are concerned, no injury or suffering need result

* Massey v. Headfort.

from the exertion of “ the father’s right ;” admitting that some near relative undertakes the charge, and fulfils it with tenderness and truth ;—still there remains the suffering inflicted on the mother.

There are few men who would stand tamely by and see a woman *struck*, even by her husband ; there are few men, who, even in a common street row, would not interfere to protect the wretched drunken creature whose coarse abuse has provoked the blows of her brutal partner ; yet what degree of bodily agony, or bodily fear, can compare with the inch-by-inch torture of this unnatural separation ? It requires but little imagination to conceive the effect on a woman’s heart, of suddenly snapping the tenderest of ties, and depriving her of the sweetest and most continual of occupations ; or to picture to oneself how dreary must be the silence of her day ! how bitter the perpetual recurrence of the hour devoted for years to her good-night visit to her nursery ! how wearing the nights of fitful sleep, disturbed by the indistinct, yet heavy consciousness of sorrow ! how maddening those bursts of intense longing to be *with* her children—to know how they are treated—to guard, to guide—to be in short what a mother’s love is, an *Inferior Providence* over those helpless creatures ! And this is a grief which does not wear out, or go by, like other sorrows—it is the torture of a life-time :

Why should any man have power because *he* is offended, to inflict the torture of a lifetime? It does not necessarily follow because this woman has quarrelled with *him* that she must be in the wrong; on the contrary, it may be obvious to the whole world that she is *not* in the wrong, the wrong may, as in the cases given in the appendix, be notoriously and confessedly on his side, and even the judge who awards the custody of the child to the father may admit that she suffers most unjustly. Why should she suffer unjustly? Because it is so written in the law? There is a story of Shylock, and the pound of flesh nearest the heart of his victim, which might bear some analogy to cases like these.

Surely, *surely* this should not be! A man does not purchase a wife as he would buy a fine blood-mare, or a hound, to continue a race of animals and then be got rid of, her offspring remaining his undoubted and undisputed property. He chooses a companion; a thinking, acting, reflecting being; one, who, if a mother, is the mother of immortal souls, and accountable to God for the trust. That man may afterwards repent the choice he made and become discontented with it, but his discontent does not transform the woman into a cipher or a slave: it does not reverse and alter every right and purpose of her existence: it does not, or rather it *ought not*, to change her from a wife and mother into a thing

as helpless, useless, and blighted, as a scathed tree. She can make no other choice; she can form no other tie; it is a sin if she even allow her secret heart to wander to another object; SHE belongs (parted though she be) to *him* and to his children:—Do neither then belong to *her*?

And this brings us to the consideration of another point; namely, whether there is not something in this law calculated to injure the female character, and thereby to militate against the best interests of general society. A woman is expected to perform with the utmost strictness the social duties of life, and much is very justly supposed to depend on the manner in which she fulfils them. Now, is not that a bad law which gives a right to an angry man, perhaps a vicious man, to deprive her of the *power* of fulfilling the first and most sacred duty which devolves to her in her character of woman? In the case of *Skinner*, the man not only was living in adultery, but *he took his child and placed it under the care of the woman with whom he was so living*, and the Court decided that nevertheless he had “the father’s right” to retain possession of it. What must be the result of thus forcibly and unjustly denying the mother the natural and proper occupation of her life? A woman does not *die* of sorrow, except in rare instances; neither does she become insane, except in rare instances, where vexation acts on a naturally nervous and exciteable tempe-

rament. She *exists* ; with the same warm affections, the same desire of sympathy, the same necessity for exercising those sympathies as before: she has no share or portion in the cares of public life ; *every occupation of her existence is more or less dependent on* THE AFFECTIONS. What then ? because a man has mercilessly taken from her the legitimate objects of those affections, is it certain, is it even *probable*, that they will never again be exercised?—Is not the restlessness of the human heart proverbial ? Do we not *all* endeavour to satisfy its restlessness by clinging to particular interests and particular preferences ? Assuredly we do, and so it will be in the case of this woman in her unnatural and anomalous position—a wife, but alone ;—a mother, but without her children. Shall it be said a man is not responsible for this ? That if she seek her consolation in hollow gaiety, or unlawful affection, he who has driven her from that narrow but complete circle, where she would thankfully have remained ;—he, who has made the natural exercise of her heart's best feelings *impossible*, has nothing to answer for ? Surely he *has* : and the law which permits this ill-exercised responsibility holds out an incentive to SIN.

Again, it is an immoral law as regards *the man*, for men are apt to be careless of such crimes as bring neither disgrace by their detection, nor penalty by their commission. The tone

of society is already lax enough, without holding out this direct assurance that the lawgivers and authorities of the realm do not consider a man the worse father of a family because he is an adulterer. Many a man might be checked and restrained from the indulgence of a vicious inclination by the thought that such indulgence would break up his domestic circle, and while it gave his wife a right to withdraw from him, gave *him* no power to torture her into acquiescence or submission, by detaining her children.

It is also a law involving an evident inconsistency, if we consider it relatively to a woman's social position in other respects.

In the matter of marriage, a girl even of fifteen or sixteen is held to be a capable and responsible being, able to make a choice, to decide on her future destiny, and to bind herself by a voluntary oath to the husband she has chosen. Does she *cease* to be a capable and responsible being after her marriage, that in the matter of Maternal Right she is no more considered than a stock or a stone? Is she, whose responsibility in early youth was so great that the rashness of an hour could bind her for life, transformed in her maturer years into an automaton to be moved only at the will of others? Is she, who was so all-important as a bride, *nothing* as a mother? One would imagine the very reverse should be the case, unless indeed the laws be made for *men* alone,

and the sole reason of such contradictory regulations be, that it would interfere with the passions of men that these young girls should not have the power to give themselves away while infants by the law ;—it would interfere with the passions of men that these young girls in after years should have a distinct and separate claim to those who are infants in very fact and truth.

It has been urged by those who would defend the despotic right of the father, that were this right modified, a facility and encouragement would be afforded to separations between husband and wife ; since the woman would no longer be withheld from leaving home by the fear of being parted from her children. This is surely a very specious argument ! It cannot be supposed that a woman who enjoyed even a comparative, chequered, and uncertain happiness at home, would change her social position as a respected wife ; her daily and hourly communion with her children ; for the *chance* of obtaining a legal order *occasionally to visit her children in the custody of others* !—It is monstrous to represent that as a *temptation*, which can at best be but a slight *mitigation of misery*. What a woman *can* bear, will still be borne, for the sake of remaining under the same roof with her little ones ; while that which is *unbearable* will no longer be inflicted with impunity by a reckless and bad husband, armed with the consciousness that he

holds *in terrorem* over his wife, the alternative of patient endurance, or the loss of her children.

Another argument is this :—that a man may feel his wife to be a very unfit person to educate his children, and may even feel convinced that she has been guilty of sin, without being able legally to prove it, or even to make it evident to the world.

It is rare that if crime is *committed*, it cannot also be *proved*. But admitting, for the sake of argument, that such *might* be the case in isolated instances, even *then*, IN DEFAULT OF PROOF, the woman should not be barred from her infant child. The misconduct of the husband is reckoned as nothing ; though glaring and offensive, *his* adultery bars no claim, unless it can be proved that the child is brought into contact with THE MISTRESS so as to be corrupted. The *corruption of the child* is then the only point considered by the law. Now that supposed lightness of behaviour in a woman, which cannot be proved, which is not evident to her family, or the world, and which is merely asserted by her husband, who admits that he CANNOT *make it evident*, is not very likely to corrupt, or be obvious to, a child ; and if it be persisted that even at that tender age, a want of principle can be instilled by example, or caused by want of holy precept, we will grant also *that*, for the sake of argument ; and having granted it, ask, why, in God's name,

if the child can be corrupted by the existence of the principles which cause the misconduct of the MOTHER (though the misconduct itself be *not* evident), is it safe from the influence of the principles of the FATHER merely because it does not see or consort with his mistress? The mistress may not be so bad as he; she may have broken no marriage tie to live with him, why is *hers* the only corrupting power, when his is an equal or greater dereliction from moral principle?

On various occasions both Counsel and Judge have expressed in the clearest manner their opinion upon the harsh and unnatural effect of the law, and it has been constantly urged in Court, that if the mothers of BASTARD infants are protected from this misery, *a fortiori* the mothers of LEGITIMATE children should also be protected. Now what is there so immutable in this “common law right of the father,” that it should *force men to decide against their feelings of natural justice*? Is the abuse to exist *for ever*, because it was not at first perceived? or are we waiting till some frightful catastrophe—some violence of a woman driven to desperation, shall afford an excuse for discussing the nature of the decisions which are well calculated to cause such results?

If the cruelty, hardship, aye, and *injustice* of the pain inflicted, be acknowledged even by those whose province it is to *administer* the law; if a Judge and Vice-Chancellor in giving his decision,

observed, that he would gladly adopt any precedent of authority for mercy, *because in a MORAL point of view he knew of NO act more harsh and cruel than depriving the mother of proper intercourse with her child*:—if it is only THE LAW which stands against the admission of the mother's natural claim—what hinders that the law be altered?

Surely in this country, where hatred of all oppression is made a national boast, where if a master were to strike his footboy, an action would lie for assault and damages—where even offensive and violent language subjects a man to a penalty; in this country, and at this time, when all liberal opinions are encouraged and fostered, it is a strange and crying shame, that the only despotic right an Englishman possesses is to wrong the mother of his children! That compelled as he is by the equal and glorious laws of his nation, to govern even the *words in which his anger is expressed* to his fellow men and subjects, he may act what cruelty he pleases by his own fire-side, and he who dares not in the open street lay a finger on the meanest man there, may stand on his own hearth and tear from the very breast of the nursing mother, the little unconscious infant whose lips were drawing from her bosom the nourishment of life!

Is this the vaunted justice—the vaunted mercy of the English code? Shall it be said that there

is in England a legal protection for *every* right and *every* claim, natural and artificial, except ONE ; and *that* ONE is the tie between mother and child ! Over *that* there is no protection ; in support of *that* the Courts “ have no *power* to interfere ; ” in making laws for the human race, the mothers of the human race were forgotten ! They were *forgotten* ; that is the word. There is no positive enactment that for any crime she can commit against the law, a woman’s infant children shall be torn from her ; but there is a negative rule, that if they *are*, by the father, taken from her, the law cannot compel restitution ; nor even allow access !

Lord Erskine, when first at the bar, is reported to have said to a Judge, who, in contradicting his argument, made use of the somewhat contemptuous expression, “ Such was the law before you were born : ” “ *It is because I was not born that it was the law, and I will see it altered before I die.* ” Is there not *one* of all who acted as counsel or judge in the cases we have given, who will say the same of this ? The real question (as was briefly and eloquently said in Mrs. Greenhill’s case) is, “ *whether the RIGHT OF THE FATHER amounts to the EXCLUSION OF THE MOTHER ?* ” If it does *not* amount to such exclusion, then some alteration is imperatively necessary ; and I think there will hardly be found a man bold enough to assert, in the face of the cases given in the

appendix, that a father *should* have this UNLIMITED POWER TO EXCLUDE THE MOTHER WITHOUT CAUSE. The man who *does* assert it, avows his readiness, on the first occasion of quarrel, to tear *his* infants from their mother; there is no medium; either he thinks the power should exist TO BE EXERTED, or that it *should not exist at all*.

The man is amenable to the law as a subject of the king; he is amenable to the law as one of a great social body; he is amenable to the law as a husband; and he is amenable to the law (*as far as the rights of property are concerned*), even as a father. Why, in this single point of the mother's claim, should he stand as free and independent of all law as if no such thing existed?

But it is said that the right of the father to his children differs from all others: that the law can scarcely reach it; that it is the RIGHT OF NATURE he exerts, not a power given under the law, and that it is doubtful whether even such interference as is already assumed, is justifiable. This is a palpably absurd objection, for it is the right of nature that a man shall walk abroad, look upon the sun, and breathe the air of heaven at his pleasure; it is the first right of his existence; but nevertheless, for the protection of others, more or less related to and connected with him as members of the common body, even *that* right is subject to the law; nor do we consider it an in-

fringement of natural rights, that one who has offended the law shall be *imprisoned*; for as Burke somewhere observes in better words, *man, in a civilized country, tacitly AGREES to exchange SOME PORTION of his natural rights, for the necessary legal protection of the rest.* There is no reason then why a man living under the law should be *independent of it in one single and isolated instance*; nor can the law excuse its non-interference on the plea of the FATHER'S natural right, when it *does* directly interfere with the natural right of the MOTHER, and forces her children from her very breast. Either the right admitted, is NATURAL or ARTIFICIAL; if ARTIFICIAL, the law has the same power to adjudge the custody of infants, that it would have in case of any other artificial right; if NATURAL, the law has no power to order children from their mother, since by nature the rights of both parents are co-equal.

Deprecating the notion that we would assert, and endeavour to establish THE MOTHER'S CLAIM, *against the law, or in defiance of legal power*; it is certainly to be wished that that power could be so firmly established, and so equally exerted, that the woman might *throw herself on its protection, instead of endeavouring to baffle its strength.* Admit the right of the father to control the education of his children; but *not* his right to sacrifice the interest of their education to personal anger. Admit his right to the respect and affec-

tion of his offspring ; but *not* his right to deprive the mother of a share of that affection. *Admit* his right, as head of his house, and guardian of his property, to retain them, when parted from the mother, as residents under his own roof, or to choose such place of tuition as may seem best to him ; but *not* his right to exile the mother from all ACCESS to her children, to prevent her from gaining intelligence of their welfare, and to inflict upon her the tortures of a life of anxiety and despair.

Nor is the present law to be supported on the plausible assertion that the broad general rule prevents a confusion of rights, and a struggle respecting the custody of the infant : on the contrary, it is productive of constant struggles, as may be proved by the cases on record. It is a law *against nature*, and such a law is not to be borne. Unless (to use the words of the Vice-Chancellor, when quoting the case of *Smith v. Smith*) “*the woman’s or the child’s DEATH determines the question,*” — unless a husband could stab his wife to the heart, and so be rid of her, *her* life will be spent in endeavours to obtain an intercourse with her children, and *his* in endeavours to prevent it. The scale may turn either way, and either parent may succeed ; but only *one* can succeed where they are thus opposed : whereas by an adjustment which preserved the mutual rights of *both*, neither would have the

temptation to wean the heart of the child from the other. The mother might fulfil the duties appointed her by God, subject to the conditions of education made by the husband; and the children (who are under the present system most unjustly made sufferers), would enjoy the benefit of the care and affection of *both* parents, and neither lean to the woman, nor imbibe their first notions of religion and humanity from a man, who, whatever his *theory* on the subject may be, *practically* endeavours to teach them the fifth commandment, not as written "Honour your father and mother;" but according to a reading of his own, "Honour your father and *forget your mother, for she has offended ME.*"

There is, in the case of every abuse, and more especially in all instances of defective legislation, an appointed day when men rise up against that which has long been, if not *quietly*, at least *obscurely* borne,—when the smouldering and consuming fire bursts into light, and shines like a warning beacon to the world. It may be that the wrong done falls at that time on one less able tamely to submit; or it may be that the last and crowning example of wrong is more obvious, palpable, and revolting than all which have preceded it. Such is the case in the present instance; the last appeal decided under the present law, was that of Mrs. Greenhill,* and

* Appendix, page 54.

when that young, hapless, unoffending woman was ordered to relinquish her infant children to an adulterous husband, the law was stamped in the eyes of all men with cruelty, absurdity, and injustice.

The difficulties attendant upon decisions of a like nature, instead of being *removed* by that unswerving, uncompromising sentence, will be *increased tenfold*. As it cannot be supposed that *any* lesson will so conquer the instinctive nature of their love, as to make them quietly surrender their offspring, we may look forward to the exertion of every species of stratagem and defiance on the part of those mothers who may be similarly placed, and who have learned from that story *to despair of the protection of the law*. Women will copy Mrs. Greenhill's example; they will leave home, they will leave friends, they will leave country, but they will NOT leave *their children*; and a hundred times more confusion and wrong will result than the law will ever put straight again. In that unnatural and revolting strife, the father tearing the child from its mother's breast, the mother flying like a hunted hind, and concealing her little ones from the face of him who should be their natural protector, it *may* perhaps occur to the lawgivers of a free country, that it would be more for the peace of society, and the credit of humanity, conditionally to admit the MOTHER'S NATURAL CLAIM.

UNIVERSITY OF CHICAGO
ORIENTAL DIVISION
JAN 10 1900

APPENDIX.

LIBRARY
OF THE
BIBLIOTHECA

APPENDIX.

CASES

SHEWING THE CONSTRUCTION AT PRESENT PUT UPON THE
LAW, AND WHICH WERE QUOTED BY

MR. SERGEANT TALFOURD,

In explanation of the object of The Custody of Infant's Bill.

* CASE OF MRS. DE MANNEVILLE, A. D. 1804.

THIS is a case well known, and perpetually quoted as a precedent to support other decisions of a like nature, though it may fairly be doubted whether the original decision should ever have been made.

In 1800, Margaret Compton, an Englishwoman, possessed of property to the amount of 700*l.* a year, married Lenard de Manneville, a French emigrant. By a settlement previous to the marriage, this property was vested in trustees for her separate use for life, and after her death, and in case of her husband surviving her, the interest of 2000*l.* was to be paid to him for his life.

The settlement also contained a covenant, that he should in no way compel his wife, after mar-

* See East's Reports, vol. v. page 221, and Vesey's Reports, vol. x. p. 61.

riage, to live in France, or in any other country than Great Britain.

Mr. de Manneville seems to have been discontented with the pecuniary arrangements made by his wife, for it appeared when the case came before the Courts of law, that he had harassed and persecuted her, to compel her to execute a will in his favour, that in defiance of the covenant he had threatened to carry her by main force out of the kingdom, and afterwards, in 1804, on her becoming a mother, he had in like manner threatened to carry the child away.

Mrs. de Manneville, fearing that he would put his threats into execution, withdrew from his house at Bolton in Lancashire, to the house of a friend of her mother's near Bolton, taking with her the baby (whom she was nursing), but leaving a note informing him where he might see the child. Being soon afterwards advised, from the state of her health, to send the baby to a nurse for a few days, her husband took that opportunity of getting possession of it, but being taken into custody under the alien act, two women, who had been sent by the mother to take care of the child, brought it back to her. Mrs. de Manneville, meanwhile, went to reside under the protection of her own mother, Mrs. Compton, and on the night of the 10th of April, her husband found means, *by force and stratagem*, to get into the house where she was; seized the

child, *then at the breast*, and carried it away almost naked in an open carriage in inclement weather.

Mrs. de Manneville applied to the King's Bench for a writ of *habeas corpus*, directing her husband to produce her infant daughter, and made affidavit of the circumstances under which it had been seized and violently torn from her,—and also that she had separated herself from her husband on account of his cruelty and ill-usage; and feared the removal of the child to France.

The case was argued; and it appearing that there was no clear ground for supposing that Mr. de Manneville intended to remove the child out of the kingdom beyond the vague fears of the mother, Lord Ellenborough decided that the father was the person entitled *by law* to the custody of the child; and on its being urged that the infant was of very tender age, that its removal from the mother deprived it of its accustomed proper nutriment, and that the father had obtained possession of it by force and fraud, Lord Ellenborough further remarked, that there was no pretence that the child had been injured for want of nurture; that the father had a *legal right*, had not abused that right, and was entitled to have the child restored to him.

The application to the Court of King's Bench having failed, a petition was presented to the Court of Chancery (in the cause which had been

instituted for the purpose of having the trusts executed and the property secured). The prayer of the petition was, that the infant be produced in Court, and *delivered over to ITS MOTHER*; and in case the Court should be of opinion that the *infant should not be taken from THE FATHER*, then that he be restrained from carrying away either the mother or child out of the jurisdiction of the Court.

In these proceedings, as well as in the former attempt on the part of the mother to regain her child, the main point considered by the Court was solely whether Mr. de Manneville, being an alien, and native of a country then at war with England, did or did not intend to take this infant, a natural born subject of Great Britain, out of the kingdom; and it was also the only point with reference to which the decision was made; for it appearing on further evidence that the mother *was* justified in fearing the removal of the child, and that the probability was, that such removal would take place unless prevented,—an order was made restraining Mr. de Manneville from taking the infant out of the jurisdiction of the Court. There was no reference to the mother's claim in this decision, nor was such claim in any way admitted; on the contrary, it was observed in the course of this case, "*the law is clear that the custody of a child, of whatever age, belongs to the father;*" and although Lord

Eldon mentioned instances of interference on the part of the Court, yet neither had these instances any reference to the mother's claim ; and it was established on that case that "the father's right" extends to the hour of a child's birth, and that he may tear it from the breast of its mother, in the act of affording it the nourishment which supports its life.

This is a very strong case. Here is an English-woman possessed of property, married to a needy French emigrant, whose only complaint against his wife appears to have been her reluctance to will away that property in his favour. The circumstances under which the child was taken were most gross, and such as would seem the act of a savage rather than of one educated in a civilized country. The child itself was only a few months old ; unweaned, and utterly dependant on the mother ; but because, as Lord Ellenborough observed, "there was no pretence it had been *injured* by want of nurture ;" that is, because the father, after cruelly taking it from the breast of its mother, supplied it with another nurse ; he was held not to have abused his "right," but to have the same claim to the custody of his child as any other man.

* SKINNER v. SKINNER, A.D. 1824. *In the Court of Common Pleas.*

This case is chiefly remarkable, inasmuch as the *effect* of the decision given, was to leave the infant not even in the custody of the father, but *in the custody of the woman with whom the father was living in adultery,*

It appeared that the husband had treated his wife with the utmost cruelty and brutality, and that, in consequence of such treatment, a separation took place: that he afterwards lived and cohabited with a woman named Anne Deverall, and that, at first, the child (who was *under six years of age* at the time of these proceedings) was permitted to reside with its mother; but subsequently, Mr. Skinner caused a writ of *habeas corpus* to be issued out of the Court of King's Bench, and on the parties attending at the chambers of Chief (then Mr.) Justice Best, it was agreed that the child should be placed under the care of a third person.

Becoming afterwards discontented with this arrangement, the father took the infant away from the third party, by stratagem and fraud, and being subsequently confined for debt in Horsemongerlane gaol, he left it in the care and custody of his mistress, Anne Deverall, who brought it to see

him every day, and continued to cohabit with him when in prison.

Application was then made for a writ of *habeas corpus*, directing William Skinner and Anne Deverall to bring up the infant, that it might be delivered over *to the care of the mother*. Affidavits were made, setting forth the ill-treatment she had sustained, the fact of the husband's adultery, removal of the child from the charge of the person with whom he had agreed that it should remain, &c.

It is remarkable that, in arguing on behalf of the mother in this case, Mr. Sergeant Lawes cited no less than FOUR *instances in which the Court had interfered to protect the mothers of BASTARD children*. The case of *ex parte Kneec*,* where the Court held that the mother of an infant illegitimate child was entitled to the custody of it, *in preference to the father, although, from his circumstances, he might be better able to educate it*. The *King v. Hopkins*,† in which the Court granted a writ of *habeas corpus*, to bring up the body of a bastard child, within the age of nurture, for the purpose of *restoring it to the custody of the mother, from whose quiet possession it was taken, at one time by fraud, and afterwards by force*. THE KING *v. SOPER*,‡ where, in like

* 1 New Rep. 148.

† 7 East. 579.

‡ 5 Term Rep. 278.

manner, the putative father obtained possession of his bastard child by fraud, and the Court ordered it *to be returned to the mother*; and *THE KING v. MOSELY*,* in which the same point was decided. The case of *BLISSET*† was also mentioned, as proving that where the father appeared to be an improper person to have the care of the child, and it was of too tender an age to choose for itself, the Court of King's Bench had a discretionary power to assign the custody of the infant to a third person, on the ground that the power of the parent is subordinate to the authority of the State, in the education of a child, as in other respects. And these points were further pressed upon the attention of the Court—namely, that the husband was confined within the walls of a prison; was, even there, living in a state of adultery; and had broken the agreement made, that the child should remain with a third person, and removed it by stratagem and fraud.

In spite, however, of these arguments, the decision was given *against the mother's claim*, on the ground that the Court of King's Bench had "*no power to interfere*;" and Lord Chief Justice Best expressed himself in the following terms:—"When this case first came before me at Chambers, I felt considerable difficulty, and thought that, under the circumstances, neither father nor

* 5 East, 224, n.

† Lofft, 748.

mother was entitled to have the custody of the child : and it was there agreed on by both parents that it should be placed under the care of a third person. Still the father had a power *to take it away* ; and although the Court might direct the child to be brought up by a writ of *habeas corpus*, yet the difficulty is, *what is to be done with it now it is before us ?* I was referred to Blisset's case, and it certainly is extremely strong to shew that the power of assigning the custody of a child brought before the Court of King's Bench was discretionary, if the father *appeared to be an improper person to take it*. I therefore thought that the most prudent course would be to assign it to the care of a third person, and which was acceded to by *both* its parents. But it now appears that the father has removed the child, and has the custody of it himself, and no authority has been cited to shew that this Court has jurisdiction *to take it out of such custody*, FOR THE PURPOSE OF DELIVERING IT TO THE MOTHER."

In the course of these observations, his Lordship referred to the Court of Chancery, as having a power *superior* to that of the King's Bench, as representing the King as *Parens Patriæ* ; and he affirmed that that *other* Court *might* accordingly, under certain circumstances, control the right of a father to the possession of his child, and appoint a proper person to watch over its morals, and see that it receive proper education

and instruction. Undoubtedly, the Court of Chancery HAS such a power; but the question is, under what circumstances it will EXERT any authority. It does not appear that Mrs. Skinner presented any petition to that Court; but in the cases of Mrs. Ball and Mrs. Greenhill, (which are given at page 49 and 54) it will be seen, that although in *both* instances the husband was living in adultery, and the wife was a person in all respects fit to keep and educate her children, the Court did not consider itself *authorized to control the custody of the father*. A woman, circumstanced as Mrs. Skinner was, goes to the Court of King's Bench and the Court says, "your case is a hard one, but *we have NO POWER to interfere*." She goes to the Court of Chancery, and there the answer is—"We certainly *have* a power to control the father's right, under circumstances of gross misconduct, ill usage of his children, or waste of their property; but we cannot consider the fact of your husband forsaking *you*, and living openly with a mistress, as *gross misconduct*, nor as any proof that he will neglect his children's interests, or waste their property; *therefore* WE cannot interfere, any more than the Court of King's Bench. The law is, that the father has a RIGHT to take the children from you, and to bar your access to them if he chooses, and we have *no power* to compel him to act otherwise."

Mrs. Skinner's case is, perhaps, as strong a

proof as could be given, that a power with respect to legitimate children *should* exist, since, as we have already said, the effect of the decision here, was to leave the child in the same custody as before; and that custody was *not* the custody of the father, (however it might be nominally held to be such,) but the custody of THE WOMAN WITH WHOM HE WAS LIVING. Now, there is much talk of protecting the *child* from ill-usage, but is there no way of protecting the *mother*? Can any thing be conceived more bitter than the situation of this woman, compelled to resign her child,—her own flesh and blood,—into the hands of one whom she must naturally regard with distrust, hatred, and loathing, as the person who had seduced from her the affections of her husband, and who had been, probably, the cause of all she had endured? Is it natural that she should expect such a one to shew kindness to her infant? or, if shewn, is there not something revolting in the idea of this unconscious child lavishing its tenderness on the woman who had so bitterly wronged its mother? Is it just to take it from that wife and mother, anxious as she must be for the welfare and purity of mind of her little one, and pollute its innocence by giving it up to the strange woman and adulteress? And can it be believed that a decision would be made in an English Court of justice, calculated to produce such a result? The Court did not indeed decide that this woman should

have the child, but such was the *effect* of the decision which, under the present state of the law, they felt themselves *legally bound* to make. It is against all our ideas of natural justice that the mistress of this adulterous husband should forcibly retain the legitimate offspring of his deserted wife, and the law *must* be defective which permits such an abuse of natural rights.

It is constantly urged that a measure of which the principles are correct, and which *in general* may be said to act well, is not to be considered faulty because it either cannot be made to apply to isolated instances of wrong, or acts upon them with an apparent increase of *oppressive* instead of *remedial* power : but the above case of Skinner is constantly quoted as a precedent ; it therefore cannot be said that it is an isolated instance of the bad effects of the law, for the decision given on that occasion is made to support *other* decisions in similar cases, and should an instance recur, point for point the same, and the most eloquent counsel at the bar were to urge the hardship of abandoning the child to the mistress of the husband, the reply of the Court would be, that *it had been held in the case of Skinner v. Skinner, that they had "NO POWER" to interfere.*

This case, therefore, must be taken with the rest, and being so taken, is a strong argument

against the existence of the father's absolute and uncontrolled right to dispose of his infant children.

CASE OF MRS. M'CLELLAN,* A.D. 1830.

Court of King's Bench.

This case, like the foregoing, is one well known and constantly quoted as a precedent, and one which cannot fail to excite compassion for the mother, since the child of whom she desired to retain possession, was afflicted with a disease by which she had lost her other children, and this state of its health was the only reason urged against the exertion of '*The father's right.*'

It does not appear in the brief report from which the facts of this case are taken, what was the cause of the separation between the father and mother; but *being* so separated, the father had taken this little girl, a child of tender years, and placed her at school, where she had remained for some time. Becoming afterwards diseased with scrofula, and requiring constant care and attention, the mother persuaded the governess to allow her to take it away, promising to restore it in a short time. The child continued ill, and

* Dowling's Practical Cases, vol. i. p. 81.

was not brought back ; and the father procured a writ of habeas corpus to bring up the infant from the custody of the mother and restore it to that of the schoolmistress.

It was argued for the mother, that the child was in a very delicate state of health, *that two of her children had died of this very complaint, and that the mother only struggled to retain possession of it, that she might personally bestow on it all the tenderness and attention its state required ;* which she had done ever since it was delivered up to her by the governess ; and a hope was expressed that under the peculiar circumstances, the child would not be delivered over to the father by the judgment of the Court.

Mr. Justice Patteson, however, decided *against the mother's claim* ; quoting de Manneville as a precedent that the law was perfectly clear as to the right of the father to the possession of his legitimate children, *of whatever age they be* ; and also referring to the case of *Skinner*, as one in which the Court had doubted its authority to interfere, (and where as we have already seen the Court did *not* interfere). His Lordship in conclusion remarked, “ There is nothing suggested which leads one to suppose that any *ill-usage* has been exercised by the father, or by the schoolmistress with whom he wishes his child to be placed. I feel myself, therefore, bound to say that the child must be delivered

up to Miss ——, whom the father has named. *It might be better, as the child is in a delicate state of health, that it SHOULD be with the mother ; but we cannot make any order on that point."*

The matter was thus brought to a conclusion. No misconduct was alleged on the part of the mother, and so far from its being for the child's interest or comfort that it should be so removed, it was expressly stated that the governess was persuaded to allow the mother to take it away, *in order that it might receive, in its sick and diseased condition, a care more vigilant and affectionate than it could otherwise obtain.* Mr. Justice Patteson remarked, "it is not pretended that the child has been ill-treated ; so gross a cruelty as the *intentional* ill-usage of a helpless child, confided even to hired attendants, is, to the honour of human nature, extremely rare : but there is a wide difference between the absence of all intentional cruelty, and the devoted watchfulness and care of a mother, especially in a case like this, where, from the circumstance of her former children having suffered from the same complaint, *the mother may be supposed to have earned the experience of what was best to be done."*

It is impossible from these brief legal reports, where nothing is set down more than is absolutely necessary to explain the decision given, to collect all the circumstances which might tend either to aggravate or excuse the apparent harshness dis-

played towards a woman in Mrs. M'Clellan's anxious and painful position; but enough has been shown to entitle this case to rank among those in which "The father's right" has been unduly exercised; and certainly to prove that *NO circumstance of hardship as regards THE MOTHER'S FEELINGS, weighs with the decision of the Courts*, although they are so repeatedly said to exert "a discretionary power." Mr. Justice Patteson did indeed give it as his private opinion that the sickly child would be best in the custody of its own mother, but, as a judge, he considered he was bound to decide *against* that mother, or rather that he had "*NO POWER to interfere.*" The same remark made in the foregoing example (*Skinner v. Skinner*) will apply here; namely, that the power to interfere OUGHT to exist somewhere, and that that power should be exerted to protect the mother's claim; indeed it may be questioned whether the law, arbitrary as it is, is not *strained*, when the father's custody is interpreted to be, the *custody of any stranger the father may choose to appoint*. There is something revolting in the idea of this little sickly wretch being forcibly taken from its mother, and returned to its schoolmistress, merely because it was the father's will and pleasure that the melancholy satisfaction of nursing it should be denied to his wife; more especially when it is remembered that she had already laid two in the

grave, and that no reason was assigned for taking it from her.

BALL v. BALL,* A. D. 1827.—*Court of Chancery.*

This case differs from the three which have already been given, in as much as the child was *above the age of nurture*, and the mother petitioned EITHER to be permitted the custody of her daughter (she offering to maintain her at her own expence), or failing in that, *to be permitted access to her* at all convenient times. This petition was to *the Court of Chancery*; and it will be seen that the superior authority to control the father's right, to which allusion was made in the cases of Skinner and M'Clellan, was not exerted in her favour.

Mr. Shadwell (the present Vice-Chancellor) and Mr. Bickersteth, (the present Master of the Rolls) for the petitioners (Mrs. Ball, and Emily Owen Ball, her daughter), stated that the father was living in habitual adultery with another woman, on account of which Mrs. Ball had obtained a divorce in the Ecclesiastical Courts.

The Vice-Chancellor observed :—

“ *The Court has nothing to do with the fact of the father's adultery, unless the father brings the*

* Simon's Reports, vol. ii. page 35.

child into contact with the woman. All the cases on this subject go upon that distinction, where adultery is the ground of a petition for depriving the father of his Common Law Right over the custody of his children."

(It was explained that the mother's object was not to deprive the father of this right, and that her petition was in the alternative, and merely prayed that *if the daughter was not allowed to live with her, she might at least have liberty of access.* The argument was then continued). "The child formerly lived with her mother, and occasionally went to visit her father. On one of these occasions, the father (without any communication with the mother) detained the daughter, and sent her to a school. *The mother was for a long time ignorant what had become of her child ;* and when, after most persevering search, she found out the school at which she had been placed, the mistress refused to allow the mother to see the child except in her presence. We admit there is no cause for taking away the father's authority, but submit that *there is very good cause for granting the OTHER ALTERNATIVE of the prayer of the petition,*" (namely, free access to the child).

"The daughter, when with her father, is living in a house where there is no society except that of a female servant of all work ; but when she is with her mother, she has the attention of a mother whose conduct is entirely unexceptionable, and

who has always endeavoured to impress upon her child a proper regard towards the father ; and in one letter from Mr. Ball he thus expresses himself : ‘ *I should be most happy to see my child put under her mother’s protection.*’ In another, ‘ *The charge of my seeking to deprive the mother of her child is most false ; if it had been true, my character would be stamped as that of a villain.*’ Yet subsequently to these letters he secretes the child from her mother, and sends her away.”

“ The affidavits go on to state that the father’s conduct was so gross and violent towards Mrs. Ball, when she went to him to make inquiries as to the daughter’s residence, that it was dangerous for her to be in his presence. THE QUESTION REALLY IS, WHETHER A CHILD IS TO BE DEPRIVED BY THE BRUTAL CONDUCT OF THE FATHER, OF THE COMPANY, ADVICE, AND PROTECTION OF A MOTHER, AGAINST WHOM NO IMPUTATION CAN BE RAISED ?”

The Vice-Chancellor said :

“ Some conduct, on the part of the father, *with reference to the management and education of the child must be shown, to warrant an interference with his* LEGAL RIGHT ; and I am bound to say, that in this case there does not appear to me to be sufficient to deprive the father of his Common Law Right to the care and custody of his child. It resolves itself into a case for authorities ; and I must consider *what has been looked upon as the*

law on this point. I do not know that I have ANY AUTHORITY TO INTERFERE. I do not know of any case similar to this, which would authorize my making the order sought, in *either* alternative. *If any could be found, I would most gladly adopt it ; for in a MORAL point of view I know of NO ACT MORE HARSH OR CRUEL, than depriving a mother of proper intercourse with her child.*

“ I was myself counsel in two cases, in which Lord Eldon refused petitions precisely similar. *Smith v. Smith* (one of them), was *precisely* similar in its facts to the present case, except that the father's object *there, was to compel the mother, by such means as are now complained of, to give up to him some property, which was settled to her own separate use.* My course of argument in that case was, *that as the law allowed THE MOTHERS OF BASTARDS to retain possession of their children till the age of seven, a fortiori, must the law allow THE CARE OF LEGITIMATE CHILDREN TO BE VESTED IN THE MOTHER* (the child in that case was under seven). The Lord Chancellor, however, refused the order, and before any further proceedings were had, *either the mother's or the child's death determined the question.* That was a very strong case ; *yet the Lord Chancellor held that the Court had no jurisdiction.*”

After some further observations, the petition in behalf of Mrs. Ball and her daughter was dis-

missed ; this Court of superior authority deciding, that it had no more power than the Court of King's Bench to restore a LEGITIMATE child to the mother from whom it had been taken by force and fraud, *even where the husband was living in open adultery* ; and not only the Court had not power to *restore* the infant, but it was not able even to order that the mother might from time to time *see* the child so taken from her !

In this, as in the previous example, there is no pretence that the mother was unfit to have the custody, or that it was in any way for the child's interest that it should be separated from her. Mrs. Ball's reputation was free from all shadow of reproach ; she was a fond and attentive parent, and she was able to maintain and educate her daughter, without any pecuniary assistance whatever from the father. Every possible argument that could be urged, was *in favour* of her retaining possession of the child ; and we have, besides, the expression of the Vice-Chancellor's feelings and opinions on the subject, AT DIRECT VARIANCE WITH HIS LEGAL DECISION. It is fair, then, to number this among the instances which prove the necessity for a revision of *that law, of which the Judge himself appeared to doubt the justice, and to admit the inhumanity*. It is fair to expect, that the day will come, when some better answer may be made in a Court, assuming authority to protect the subject, than that here given, namely,

“ *We have NO POWER to interfere.*” If ever circumstances warranted interference, those under which Mrs. Ball was deprived of her young daughter, would seem to require it. The husband had been legally separated from her on account of *his* conduct ; he was of so violent and furious a disposition, that it was *dangerous* for this unhappy woman to approach his presence, *merely to ask the residence of her child* ; he had obtained possession by fraud, and sent it away without even permitting the mother to know of its removal. In short, there is no possible way in which we can reconcile the decision given with our ideas of justice. The decision was *essentially* UNJUST, and is, besides, mischievous in its effect, since it establishes a precedent for a like ill-usage of some other sufferer, and a certainty of impunity on the part of the sinner ; both which mischief and injustice might be prevented by the acknowledgment of THE NATURAL CLAIM OF THE MOTHER, where nothing has occurred by which she can be said to have forfeited that claim.

* MRS. GREENHILL'S CASE.

This case affords the strongest argument that can be given against the absolute right of the

* Court of Chancery and Court of King's Bench.

father over the persons of his infant children ; since more cruel, unjust, unmanly dealing, or more gross and open defiance of all decency and social right, never was displayed than in the reported conduct of the husband ; nor is it possible to deny, that the law which permitted such a decision in such a case, is INHUMAN, IMMORAL, AND FOUNDED ON NO CONCEIVABLE PRINCIPLE OF NATURAL JUSTICE.

In the year 1829 Miss Macdonald, daughter of Colonel Macdonald of Exeter, was married to B. C. Greenhill, Esq. They had three children ; Lavinia, Flora-Macdonald, and Clara ; *all severally under six years of age at the time of the separation* ; the youngest being but two years and a half old.

In September 1835, Mrs. Greenhill (being then at Weymouth for the benefit of her health, with her three little girls, and Mr. Greenhill absent in his pleasure yacht) received intelligence that her husband was unfaithful to her, and had for more than a year been intimate with a female of the name of Graham, with whom he had cohabited both in London and at Portsmouth, passing her off as his wife, and even allowing her to assume his name. Distracted with sorrow and indignation, Mrs. Greenhill set out for Exeter, where her mother resided, in order to obtain the support and advice of her family under these trying circumstances. Her brother, Captain R. Mac-

donald, and her sister, accompanied her back to Winterborne (one stage short of Weymouth), where the two ladies remained till Captain Macdonald having proceeded alone to Weymouth, and broken up the establishment there, brought the children to their mother; the party then returned to Exeter, and Mrs. Greenhill remained under the protection of her own family, and instituted proceedings in the proper Courts, for separation from her husband (on the ground of adultery) and for alimony.

On Mr. Greenhill being informed of the discovery that had been made, and the plans his wife had in consequence adopted, he became anxious to prevent the proceedings in the Ecclesiastical Courts, and accordingly sent his attorney, Mr. B. of Exeter, to obtain an interview with Mrs. Greenhill, and induce her if possible to relinquish the proceedings. The outraged wife however expressed her resolution to adhere to the measures adopted in unison with the opinions of her own family, and on Mr. B. informing her that Mr. Greenhill was willing to give her such a provision as it was likely the Court would award her for alimony, she replied, that she would accept “ nothing but what *the law* would give her.”

Finding that Mrs. Greenhill would not consent to forego the suit, her husband changed his tone, and Mr. B. was instructed to write to her, and make her aware of the insult and injury which

would be *added* to the wrong she had already suffered, in the event of her persisting to go into the Ecclesiastical Court ; which was accordingly done : and the conclusion of the letter was as follows :—

“ *Mr. B. makes, therefore, on Mr. Greenhill's behalf, three distinct demands :—*

“ 1. *The return of all Mr. Greenhill's jewels, taken from Knowle.*

“ 2. *An order, that the carriage should be delivered up to Mr. B. this evening.*

“ 3. *And, the most important of all, that the CHILDREN SHALL BE PLACED UNDER MR. B.'S PROTECTION, to be taken to Knowle.*”

Mrs. Greenhill did not obey the command of this letter, and the next step taken by her husband was to move for a writ of *habeas corpus*, commanding her to produce the three children on the 28th October, at the house of Justice Patteson. As soon as the writ was issued, and before its return, the mother instituted a suit in Chancery, for the purpose of making the children wards of that Court ; and a petition was presented praying the PROTECTION OF THE COURT, and that a proper guardian might be appointed.

On the night of the 28th October, in obedience to the writ of *habeas corpus*, Mrs. Greenhill having arrived with her children from Exeter, appeared with them at Mr. Justice Patteson's. Some argument by counsel on each side took

place before his Lordship, who ultimately allowed the matter to stand over till the evening of Thursday, the 5th November, the children meanwhile remaining with the mother, and their presence being dispensed with by the consent of all parties.

On the morning of Thursday, the 5th of November, the petition in Chancery was heard by the Vice-Chancellor, and six affidavits were read before him, the substance of which was as follows:—

That Mr. Greenhill had, as already stated, carried on an adulterous connection with Mrs. Graham, for more than a twelvemonth; and that *he positively refused to part with her* (although he affirmed, that he had expressed his regret and contrition to his wife, and made overtures of reconciliation); that on being told by his wife that she had heard he had taken a house for three years for this woman, he replied, “it was no business of *hers* if he had taken it for *ten* years;” that he allowed Mrs. Graham to take his wife’s name, and call herself “Mrs. Greenhill;” and at other times *he* called himself “Mr. Graham;” and that he desired the servant, who also occasionally waited on his wife, to wait on this woman, and drive her out in his cab; that he left his wife at Weymouth, to go and live with Mrs. Graham at Portsmouth; and that he took her with him in his yacht, &c.; in short, that as to

the act of adultery, it was neither attempted to be concealed or denied ; but, on the contrary, he had admitted it to his wife's uncle and other relatives, and expressed his determination to persist in the intimacy he had formed.

That Mrs. Greenhill firmly believed, that her children, if taken from her, would be *prevented from seeing her*, and delivered over to Mrs. Mary Tyler Greenhill ; that the said Mrs. Mary Tyler Greenhill had not only abused and quarrelled with her daughter-in-law, and refused to see her grandchildren, but that she had been at law for years *with her own son* ; and that so bitter was their estrangement, that Mr. Greenhill had said to a friend who advised him to be reconciled to his mother, that such reconciliation was *impossible* ; and that they were in fact *only drawn together by the anger of Mr. Greenhill against his wife, and since the quarrel between the parties*. That for these and other reasons, neither Mrs. M. Tyler Greenhill, nor Mr. Greenhill himself, were fit persons to have the custody of these infant children, and that their mother *was* a fit and proper person, and *neither her husband, nor any other person, alleged anything to the contrary, nor had there been at any time a shadow of imputation against her*. That Mrs. Greenhill's own mother, Mrs. Macdonald (who had always been on good terms with her son-in-law, and had shewn him great affection, especially in nursing him through

the cholera, when every one else, from fear or prudence, withdrew from the house), *was willing to receive his wife and children; to give them a permanent home with her; and was also willing, that the father should come and visit his children, at her house, as often as he pleased.* That Mrs. G. was fondly and devotedly attached to her little girls, and had never been separated from them; and that the father had always been in the habit of leaving them under her sole custody and control during his absence from home; and though it was affirmed, on the one hand, that Mr. Greenhill was a fond and attentive father, yet it was sworn in contradiction, that one of the little children being brought into the room with several strangers, asked Mrs. Greenhill's uncle, "if *he* was papa," from which it was argued, that they had *not* been in the frequent habit of seeing him, since his connection with Mrs. Graham. Finally, it was sworn, that Mrs. Greenhill had always fulfilled, to the utmost, her duties as a wife and mother; and that there was no possible ground for depriving her of her three little girls, but, on the contrary, every reason why she should be permitted the care of them; and that her health, already very delicate, had suffered so much from the terror, agony, and sorrow, which she had lately endured, that it was expected she would sink under the blow (if inflicted) of that forcible separation.

All this having been sworn, the Vice-Chancellor gave his decision, namely, “ *That however bad and immoral Mr. Greenhill’s conduct might be, unless that conduct was brought so under the notice of the children as to render it probable that their minds would be contaminated, the Court of Chancery had NO AUTHORITY TO INTERFERE with the common law right of the father, and that he had not THE POWER to order that Mrs. Greenhill should even SEE her children as a matter of right.*” He accordingly dismissed the petition, the mother’s separate claim not being acknowledged by the Court. Similar affidavits were read again the same evening, before Mr. Justice Patteson, who was attended by counsel on each side. His Lordship took time to consider these affidavits, and said that before he decided, he would consult the other judges.

On the 10th November, his decision was given *against* the mother’s claim, and he signed an order that Mrs. Greenhill should forthwith deliver up to Mr. Greenhill his three infant children.

On the 12th, that order was made a rule of Court, and *served personally* by Mr. Greenhill on his wife, of whom he, at the same time, demanded the children. Mrs. Greenhill gave only a written reply, couched as follows :—

“ Mrs. Greenhill is desirous of paying the utmost respect to the Court ; but as she feels that

“ the health and comfort of her three infants
“ (under the age of six years), will be destroyed
“ by their removal from her care, she prefers sa-
“ crificing *herself*, if it be called for, rather than
“ so sacrifice her *children* ; being well assured,
“ that their removal is with the ultimate inten-
“ tion of excluding her from all communication
“ with them.”

Mr. Greenhill's next step was to make affidavit of the service of the rule, and of his wife's refusal to part with her infants, in order to obtain a writ of attachment against her ; i. e. *to cause her to be imprisoned* for contempt of Court.

Mrs. Greenhill, on her part, obtained a rule *nisi* in the Court of King's Bench, calling on her husband to shew cause why Mr. Justice Patteson's order should not be set aside, and the children remain with their mother.

A short delay was granted to Mrs. Greenhill to shew cause why an attachment should not issue against her ; and the same delay was allowed to Mr. Greenhill to shew cause why Mr. Justice Patteson's order should not be discharged.

The matter was argued on the 24th November —Mr. Sergeant Talfourd appearing for Mr. Greenhill. At the conclusion of the learned Sergeant's address, Lord Denman observed that it would be better that some arrangement should take place, so that *both* parties should have access to the children, and to effect that object a further

delay was given. On the following day, Mr. Sergeant Wilde, Mr. Sergeant Talfourd, Mr. Greenhill and his attorney, and Mrs. Mary Tyler Greenhill, met for the purpose suggested by Lord Denman; but owing, as affirmed, to the obstinacy and perverseness of this lady (who seemed determined to prevent her son from coming to any reasonable terms), no arrangement was entered into.

On the 30th instant Mr. Greenhill declared, through his attorney, that no further steps would be taken for such arrangement; and demanded to see the children. Mrs. Greenhill becoming alarmed lest they should be seized from her, withdrew precipitately and left the kingdom, taking with her her three little girls.

In January the matter was again argued (Mrs. Greenhill being still abroad), and the rule obtained by her, to set aside Justice Patteson's order, was discharged; or, in other words, the last attempt made by this unhappy and unoffending woman *LEGALLY to retain possession of her infant children FAILED; the decision of the judges being given AGAINST THE MOTHER'S CLAIM.*

In the course of the arguments advanced by the counsel on either side, at the different periods of this cause, the following observations were made in support of Mrs. Greenhill's case:—

“ The children are all females, and infants of tender years, and whom it appears most UNNA-

TURAL to tear from a mother who is devotedly attached to them, against whom not a shadow of imputation rests, and whom her husband does not hesitate to admit is in every respect a fit and proper person to have the care and custody of them. *ILLEGITIMATE children under the age of nurture* (which has been held to be seven years), *cannot by law be taken from the mother, and it seems most UNNATURAL and UNJUST that LEGITIMATE children should be in a worse position. It cannot be denied that it has been held to be law that an infant may, by the father, be torn from the breast, but it is submitted THAT THERE IS GROUND FOR A REVISION OF THAT DECISION.*"

"Mrs. G. does not dispute her husband's right to the custody of the children. She has offered to take them to any part of England Mr. G. shall prescribe, and to obey his injunctions, *provided she be not wholly separated from them.* The question in this case is, *not whether the rights of the father are paramount,* BUT WHETHER THE LAW IS ENTIRELY REGARDLESS OF THE NATURAL CLAIM OF THE MOTHER."

"The mother does not even insist that the children shall be in the same house with her, *but only that she shall have access to her children.* The real question is, WHETHER THE RIGHT OF THE FATHER AMOUNTS TO THE EXCLUSION OF THE MOTHER."—"Where the father applies, as in the present case, not for the purpose of really assert-

ing his own right, but MERELY FOR THE PURPOSE OF EXCLUDING THE MOTHER FROM HAVING ACCESS TO HER CHILDREN, this Court will (in the exercise of its discretion) *refuse to permit so harsh and cruel a proceeding.*”

“It is not contended that this Court has power to take the child from the father, but surely the Court will pause before it makes an order to deprive children of so tender an age of the care and superintendence of the mother. *The Court may be quiescent, and is not bound to act.* If this rule is made absolute, Mrs. Greenhill will have no means of superintending the education of her infant daughters, nor will she be able even to see them, for in *Ball v. Ball* the Vice-Chancellor decided *that he had no power to order the father to permit the mother to have access to her child.*”

“Here, the fault and blame of the parents not living together, must be imputed to the father.”

In opposition to these remarks, and in support of the “Father’s Right,” as exercised by Mr. Greenhill, it was observed:—

“There is no doubt that BY LAW the father is entitled to the custody of his children. The wife is *not* entitled to such custody in opposition to the claims of the husband.”

“There is no ground for setting aside the order of Mr. Justice Patteson. *One alleged reason is, that the children are within the age of nurture.* That is not a sufficient reason. THE LAW has

given the custody of the children, in cases of unhappy disputes between the husband and wife, to the husband. Of *illegitimate* children, it is true that they cannot be separated from the mother during the period of nurture, but THE LAW recognises no such principle with respect to *legitimate children*."

"In *Rex v. De Manneville*, (a much stronger case, since the infant was only eight months old) this question was much considered, *and that case is an express authority to shew that Mrs. Greenhill has no right to detain these children*. The case of *DE MANNEVILLE* is recognised and commented on in the case of *M'CLELLAN*. In *ex parte SKINNER*, all the cases are collected, and the true distinction is taken,—that *this Court has no discretionary power* to control the right of a father to the possession of his child."

"*The second ground for setting aside Justice Patteson's order, is the immorality of the father*. It is laid down by Lord Eldon that this is a matter within the jurisdiction of the Chancellor only; but *assuming that this Court has the same jurisdiction as the Lord Chancellor,—will this Court differ from the Vice-Chancellor, who upon the statement of the circumstances now presented to this Court, refused to interfere with the right of the father?* In *BALL v. BALL*, the Vice-Chancellor is reported to have said, "the Cour has nothing to do with the fact of the

father's adultery, unless he bring the child into contact with the woman. *In ex parte Skinner, not only was the husband living in adultery, but he actually had entrusted the child to the woman with whom he was living in adultery, AND YET THE COURT ALLOWED HIM TO RETAIN THE CHILD.*"

Lord Denman, in giving his decision, said—
" This is a rule obtained for setting aside an order, which directs that the children of Mr. Greenhill should be delivered up to him ; and as, unfortunately, the attempts to arrange the matter have failed, we are now bound to pronounce what we believe to be THE LAW upon the subject. There is no doubt whatever, that where a father has the custody of his children, he is not to be deprived of them, except under such circumstances of misconduct as do not occur in the present case ; for although Mr. Greenhill is charged with misconduct, yet there is nothing in the case stated, with respect to his conduct, which has ever been held *sufficient to deprive A FATHER of the custody of his children.*"

" It is true the father has formed an illicit connection ; but it is not pretended that the woman with whom the connection has been formed was living in the father's house, *or that his conduct in this connection has been marked with any offensive indecency.* As far as the husband's assurances may be taken, they are distinctly given, that he would not bring the children into contact with the

woman in question ; and it is not to be presumed that he would violate the assurances he has thus given." And finally his Lordship observed :—

" We do not feel that we could make any *modified* order ; and we cannot entertain any doubt that my brother Patteson acted rightly."

Now, without discussing whether the circumstances of Mr. Greenhill permitting his mistress to bear his wife's name ; to be waited on by his wife's servant ; to sail in the yacht in which he had just before taken his wife ; or the fact of his admitting to his wife's relations that this woman *was* his mistress ; refusing to part with her, and admitting that he lived with her as Mr. Graham ; were or were not circumstances which *marked his conduct in the connection with offensive indecency* ; and allowing the negative proof afforded by the long concealment of that connection, that some decency *was* observed with respect to its management, yet we may be permitted to ask whether it would not be an improvement in the law if the question were not so much "*Why should this man, in spite of his adultery, NOT take away his children?*" as "*Why should this woman who has in no way offended, be DEPRIVED of her children?*" especially as there is no question but the father would in *all* cases have whatever access he pleased to his offspring.

Suppose the case to be reversed ; suppose a woman to have carried on an intrigue for a year,

and to have conducted it with so much *decency*, i. e. with so much hard and skilful hypocrisy, that the husband whom she continually met, and with whom she was on terms of affection and confidence, never suspected her, till accident, or the accusation of a third party, revealed it to him. What would be the result in such a case ? Why that woman would at once forfeit every social right of her existence. She would have no claim on the protection of the law as regarded her children, no claim as regarded her husband, no claim as regarded the slenderest provision that could find her in bread ; she would be an outlawed creature ; if the husband shut his door against her, and forbade her ever to look on her children again, he would do no more than would be considered justifiable. Surely it is a glaring piece of injustice, that while the adulterous wife forfeits every claim of nature, the adulterous husband not only is pronounced as fit to fulfil the social relations, as before, but has this ADDITIONAL PRIVILEGE accorded him, that if his wife rebels against his intention of keeping a mistress, he can *punish her for such rebellion*, by wringing from her the only source of happiness she has remaining, in the society and endearments of her infant children !

Such was the case in the instance before us, and such may be the case a hundred times, or a thousand times again, unless some more rational

law be made on the subject. Mrs. Greenhill tried the Court of Chancery, she tried the Court of King's Bench, but there was no power, vested in either Court to interfere! It may be said indeed, that since the children were from the first in the custody of the mother, and were never surrendered out of that custody, the spirit and determination shewn by this unhappy young woman did in fact *baffle the law*: but her case, *as affected by legal decision*, is not the less hard. Mr. Greenhill's object from the beginning was to prevent proceedings against himself in the Ecclesiastical Court; *in this he has succeeded*. His wife, who had not sinned, and who had already suffered bitterly in consequence of the discovery of his infidelity, *is compelled by the effect of the law which obliges her to forfeit her children, to forego that other law which holds out to her the slender protection of not being legally bound to live with her husband*; she is either to be an exile abroad, or a prisoner in England; and the husband is to have the triumph of finding, that not only there is no *punishment for his adultery*, but that the state of the law as regards his offspring, does in fact hold out a *protection* to him; and supplies him with a power over his unoffending wife, of which he himself was probably not aware, when he first sent Mr. B. to Exeter with conditional offers of arrangement and separate maintenance.

In this case, and in support of it, were quoted all the previous cases given, (each of which is an aggravated instance of injustice;) and from it may be drawn a deduction injurious to the best interests of society, since it teaches women rather to depend, as they are already prone to do, on wild and romantic expedients, than on the protection afforded them by the laws and rules which govern the community at large.

It is impossible to find fault with the conduct of Mrs. Greenhill, in withdrawing herself and little ones, after the decision given; since that decision was to leave her in the bloom of youth deceived, betrayed, and utterly desolate, while it sent her children to glean what affection their father could spare, from the fiercer fire of an illicit attachment; perhaps to share that affection with a spurious offspring. Yet what a picture is here presented! The law called upon to sanction and support a man in the most glaring injustice, inflicted on a helpless and innocent woman: the law put into force against the holiest rights of nature by the vengeful caprice of this bad man: the dreariest punishment under the law (namely, incarceration) awarded to a woman whose only offence was attachment to her children: and finally, be it remarked, *the law baffled*, by the strength of universal sympathy against it, among those who saw its effect in that instance. All this resulting, as affirmed, from a want of

power on the part of the Courts, which might enable them to exercise a proper discretion in such cases! Can any one doubt that some alteration is necessary?

For an example of the rule that at the age of 14 years, a child cannot be forced back to the custody of its father, *if the child himself be unwilling to return*, vide the case of the King v. Penelope Smith,* where a father having sued the Court of King's Bench for a writ of habeas corpus, in order to obtain possession of his son (a boy between 13 and 14), from an aunt who kept him; the Court REFUSED TO DETERMINE *the right of guardianship*, but *set the child at liberty, telling him he might go where he thought fit: on the principle that WHERE THE CHILD IS OF AN AGE TO JUDGE FOR ITSELF, the Court will not deliver it into the custody of the father.*

For the protection granted to the mothers of illegitimate children, vide the case of *ex parte Knee*,† where the Court held that the mother of an infant illegitimate child was entitled to the custody of it, *in preference to the father, although, from his circumstances, he might be better able to educate it.* The King v. Hopkins,‡ in which the Court granted a writ of *habeas corpus*, to bring up the body of a bastard child, within the age of nurture, for the purpose of *restoring it to the*

* 2 Str. 982.

† New Rep. p. 148.

‡ 7 East. 579.

custody of the mother, from whose quiet possession it was taken, at one time by fraud, and afterwards by force. THE KING *v.* SOPER,* where, in like manner, the putative father obtained possession of his bastard child by fraud, and the Court ordered it *to be returned to the mother*; and THE KING *v.* MOSELY,† in which the same point was decided.

* 5 Term Rep. 278.

† 5 East, 224. n.

THE END.



JUST PUBLISHED BY
ROAKE AND VARTY, 31, STRAND, LONDON.

SCIENTIFIC WORKS
ON
ROADS, RAILWAYS, AND CANALS.

IMPORTANT WORK FOR ENGINEERS, CONTRACTORS, AND SURVEYORS,

Dedicated, by Permission, to the President and Members of the Institution of Civil Engineers.

TABLES FOR CALCULATING
THE CUBIC QUANTITY OF EARTHWORK IN THE CUTTINGS
AND EMBANKMENTS OF CANALS, RAILWAYS, AND
TURNPIKE ROADS.

By JOHN MACNEILL, Civil Engineer, M.R.I.A., F.R.A.S., &c.

Beautifully printed in Demy 8vo. bound in green vellum.

By means of these Tables, the TRUE QUANTITIES can be ascertained in a fourth part of the time usually occupied in arriving at an APPROXIMATE result.

For the great practical utility of these Tables see a recent work, "A Treatise on Roads," &c. By SIR HENRY PARNELL.

ON THE MEANS OF COMPARING
THE RESPECTIVE ADVANTAGES OF DIFFERENT LINES OF
RAILWAY, AND ON THE USE OF LOCOMOTIVE ENGINES.

TRANSLATED FROM THE FRENCH OF

M. NAVIER, Ingenieur en Chef des Ponts en Chaussées, Paris.

By JOHN MACNEILL, Civil Engineer, M.R.I.A., F.R.A.S., &c.

"A publication of very great practical utility, in enabling us to take into our estimate all the elements which tend to the establishment of one Line of Road as superior to another, and especially on the difficult and contested points of elevation and powers of Locomotion."—LITERARY GAZETTE.

RAILWAY TAXATION CONSIDERED.

8vo. Price 1s.

CONVEYANCE UPON CANALS AND RAILROADS
COMPARED. By DETECTOR.

Price 6d.

THE EFFECTS OF ROADS ON POPULATION.

Price 6d.

JUST PUBLISHED BY
ROAKE AND VARTY, 31, STRAND, LONDON.

SECOND EDITION.

In One Volume, demy 8vo. with Portrait after Lawrence, bound in cloth.

SPEECHES

BY THE RIGHT HON. SIR ROBERT PEEL, BART.,

During his Administration ; also his
ADDRESS TO THE ELECTORS OF TAMWORTH, &c. &c.

YEOMANRY CAVALRY.

Demy 8vo.

REMARKS ON THE POWERS, DUTIES, CONDITION, AND
CAPABILITY OF YEOMANRY CAVALRY.

BY A YEOMAN.

Post 8vo. bound in cloth and lettered, price 5s.

GOSPEL HARMONY.

A SACRED POEM, IN FOUR PARTS.

“ In the cause
Of God and his Messiah.”

By T. PARFITT, D.D. of Balliol College, Oxford, Perpetual Curate,
Glastonbury.

Demy 12mo. neatly bound in cloth, 6s.

THE YOUNG CHRISTIAN'S GUIDE TO
CONFIRMATION.

Being Familiar Lectures on the Baptismal Vow—The Creed—
The Ten Commandments—The Lord's Prayer, and the Lord's
Supper, with an Introductory Address to each ; intended as a
preparation for Young Christians, previous to their being pre-
sented to the Bishop to be Confirmed.

By the REV. W. T. MYERS, A.M. Curate of Eltham, Domestic Chaplain
to the Right Hon. Lord Viscount Beresford.

THE MOTHER'S FRIEND,

IN FOUR PARTS.—*Price 6d.*

*N.B. This little Book has been found highly useful as an accompaniment
to the gift or loan of Childbed Linen, and is admirably adapted to the
wants and circumstances of the Poor.*

THE SCHOOL-FELLOWS ;

Or the Influence of Character and Connexions displayed. De-
signed as a Present for Young Persons leaving School, and
entering on Service.

Second Edition. Price 6d.







